

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

UNITED STATES OF AMERICA

VERSUS

CRIMINAL ACTION NO. 4:05CR83-P-D

TAVARES MARTIN

ORDER

This cause is before the Court on defendant Martin's Motion for Government to File a Fed. R. Crim. P. Rule 35(b) [50]. The Court, having reviewed the motion, the response, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

Defendant urges that the government's failure to advise the Court of his cooperation at sentencing and to file a motion pursuant to Rule 35 of the Federal Rules of Civil Procedure amount to an abuse of discretion. He seeks entry of an order compelling the United States Attorney to file a Rule 35 motion.

Under the terms of Martin's plea agreement, the government retained sole discretion regarding the decision whether to move for a downward departure under 5K1.1 or for a reduced sentence under F.R.Cr.P. 35. United States v. Solis, 169 F.3d 224 (5th Cir. 1999). Therefore, absent a colorable claim of unconstitutional motive, this Court lacks the authority to entertain defendant's claim that the government's failure to file a motion under Rule 35 constituted a breach of the plea agreement. Close examination of the defendant's filings unearths no such allegations. Accordingly, the motion is not well-taken and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that defendant Martin's Motion for

Government to File a Fed. R. Crim. P. 35(b) is not well-taken and should be, and hereby is,
DENIED.

SO ORDERED, this the 7th day of May, 2010.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE